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November 17, 2023

Hon. Charles R. Breyer
United States District Judge
Phillip Burton Federal Building
& United States Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Uber Technologies, Inc., Passenger Sexual Assault Litigation*
MDL No. 3084

Dear Judge Breyer:

Pursuant to this Court's order dated November 6, 2023 (ECF No. 70), please accept this letter application of Ellyn Hurd of the firm Simmons Hanly Conroy ("SHC"), for a leadership position in MDL 3084, *In re: Uber Technologies, Inc., Passenger Sexual Assault Litigation*. As described below, Ms. Hurd is exceptionally qualified to serve this Court in light of her significant experience in this type of litigation and MDLs. In addition, SHC can and will bring the necessary resources to a case that will likely be both complicated and expensive to litigate.

The Court identified five criteria in its Order that it will consider in reviewing applications. Each is addressed in turn.

1. Professional Experience with this type of litigation/MDLs

Ms. Hurd has significant experience in this type of litigation. She was one of the lead lawyers in a series of consolidated sexual abuse cases in the United States District Court for the District of Connecticut (Hon. Robert Chatigny). The lead case was *Gervil St. Louis v. Douglas Perlitz, et al.*, No. 3:13-cv-01132. That case involved over 150 Haitian nationals against Fairfield University, the Society of Jesus of New England (Jesuits), and others. In those cases, she was responsible for working up the institutional liability for each defendant, as well as the development of each plaintiff's case. These cases required significant time in Haiti for witness interviews, fact investigation and over 50 depositions of the individual plaintiffs. Ms. Hurd worked directly with experts in multiple areas, including hiring, screening, and supervision of employees, as well as psychological trauma and post-traumatic stress disorder. She was also involved in the resolution of the case, which was complicated given the international aspects and various ages of the boys. That case was successfully resolved through a class action settlement. While that case was not an MDL, its operation and structure were very similar.

We stand for our clients.

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Ms. Hurd also has significant experience working in MDLs. Although she has not had a formal appointment in an MDL, she has held positions of significant responsibility. SHC is a co-lead in the Nat'l Prescription Opiate Litigation (MDL 2804) and, as a result, Ms. Hurd's exposure to all aspects of the case has been significant. In addition to conducting discovery and working with multiple experts, Ms. Hurd was assigned by co-leads to spearhead the organization and presentation for admission of all documents and deposition testimony to be used in the bellwether trials in, among other locations, San Francisco and the coordinated New York State Court opioid trial. That responsibility continues to the present and provided her the opportunity to be part of the trial team in the Walgreen's trial before this Court in the spring and summer of 2022. Prior to that, she was part of the trial team in the seven-month opioid jury trial before Hon. Jerry Garguilo that took place in 2021. Ms. Hurd has been actively involved in the Opioid MDL since 2018, which has involved multiple trials, bankruptcies, settlements (both global and one-off settlements), as well as the continued prosecution of remaining defendants.

Most recently, Ms. Hurd was a member of the team that tried the opioid case before this Court in 2022 against Walgreens and other opioid manufacturers and distributors. Ms. Hurd served as second chair to Jayne Conroy in the preparation of the direct and cross examination of several expert witnesses. During the 11 week liability trial, Ms. Hurd worked each day alongside lawyers from the San Francisco City Attorney's office, Lieff Cabraser, Robins Geller, and Levin Papantonio and was responsible for the organization and presentation for admission of all declarations, documents, and deposition testimony. Ms. Hurd's resume is attached as Exhibit A.

2. Judicial Contact Information

Hon. Jerry Garguilo – *In Re Opioid Litigation*, Index No. 400000/2017; Supreme Court of the State of New York, Suffolk County (631-740-3915).

Hon. Robert Chatigny – Lead Case: *Gervil St. Louis v. Douglas Perlitz, et al.*, No. 3:13-cv-01132; District of Connecticut (Judicial Assistant: Lisa Reckevicius, 860-240-3659).

Hon. Dan Aaron Polster – *In re: National Prescription Opiate Litigation* (MDL 2804); Northern District of Ohio (Courtroom Deputy: Katie King, 216-357-7192).

3. Willingness and ability to immediately commit to time-consuming litigation

Ms. Hurd has demonstrated her willingness and ability to commit to time-consuming multidistrict litigations as evidenced by her dedication to the multi-district litigation process over the past decade and the progressively increasing responsibilities she has accepted in each litigation. SHC has devoted significant resources to prosecuting multiple MDLs, including being involved in multiple MDLs at once. Ms. Hurd is familiar with the demands of such cases and can represent to the Court that she is fully able to take on whatever level of responsibility this Court deems appropriate.

4. Willingness and ability to work cooperatively with other plaintiffs' counsel and defense counsel.

Ms. Hurd and the members of her firm are well-known and well-respected within the plaintiffs' MDL bar. While litigation is an adversarial process by design, Ms. Hurd strongly



believes that collaboration with *all* counsel is imperative in any complex litigation where numerous lawyers are involved on both sides of the litigation. Complex cases require significant court resources to decide substantive matters and those resources should not be wasted addressing minor disputes that can be avoided simply by being reasonable.

5. Access to resources available to prosecute this litigation in a timely manner.

Renamed following the merger of New York-based Hanly Conroy with the Illinois-based Simmons Browder Gianaris Angelides & Barnerd LLC, SHC brings unparalleled depth, experience, and resources to this case, both in terms of personnel and substantial financial resources. With approximately 80 lawyers and total staff of more than 225, the firm has offices on both coasts (including in San Francisco), as well as in the Midwest where it is headquartered. The firm handles cases only on a contingent-fee basis, and focuses its practice on sexual assault cases, asbestos personal injury cases, pharmaceutical and other similar mass torts, consumer fraud class actions, antitrust cases, and other complex plaintiffs' side litigation. In addition to Ms. Hurd, other lawyers at SHC have substantial experience, including leadership experience, in complex multidistrict litigations, allowing for depth in staffing as needed. SHC is both willing and able to devote the necessary personnel and substantial financial resources necessary to prosecute this case.

Finally, while Ms. Hurd is willing to serve in whatever capacity the Court thinks is appropriate, she believes that the most appropriate role for her in this litigation is as a member of the Plaintiffs' Executive Committee. Her application is supported by the plaintiffs' counsel listed on the attached Exhibit B, and Ms. Hurd likewise supports the application of those attorneys for the appointments listed there. Ms. Hurd knows those lawyers and law firms well, has worked with many of them in prior MDLs, and can assure the Court that this MDL would be well-served by those appointments.

Respectfully submitted,

Ellyn Hurd

EXHIBIT A - Resume

ELLYN HEIMLICH HURD ehurd@simmonsfirm.com

Attorney with over 20 years of experience, representing clients from all 50 states in complex litigation and mass tort actions.

Attorney Ellyn Hurd is a partner at Simmons Hanly Conroy in the Complex Litigation Department. She joined the firm in 2012 and has focused her practice on litigating the firm's sexual abuse and assault cases as well as multidistrict pharmaceutical and cosmetic cases. Before joining the firm, Ellyn worked as an associate at a law firm in New Bedford, Massachusetts, where she focused her practice on real property litigation and municipal matters.

Bar and Court Admissions

Massachusetts, 2002

United States District Court for the District of Massachusetts, 2003

Education

Boston College Law School, J.D. 2001

Wellesley College, A.B. Chemistry 1997

2018 to Present Fighting the Opioid Epidemic

Ellyn has played an integral part in the National Prescription Opiate Multidistrict Litigation since 2018. Ellyn represents the interests of Simmons Hanly Conroy's many governmental clients in the massive and far-reaching litigation involving the pharmaceutical industry's improper promotion and distribution of prescription opioid medications. The litigation has secured billions of dollars in nationwide settlements, which has provided meaningful funds for communities that incurred millions in costs related to dealing with the estimated 400,000 opioid-related deaths since 1996.

- ***San Francisco Opioid Trial (Hon. Charles R. Breyer)*** In 2022, as part of the fourth bellwether case in the federal prescription opioid litigation, Ellyn served on the trial team that helped secure a \$230 million settlement with Walgreens for the city of San Francisco over the company's role in the opioid epidemic. After an 11-week liability trial, U.S. District Judge Charles R. Breyer found Walgreens liable for contributing to the opioid epidemic and creating a public nuisance in the city. Walgreens was the last remaining defendant in the trial, after the other Defendants, which included opioid manufacturers and distributors, had already settled for over \$120 million total.
- ***The New York Opioid Trial (Hon. Jerry Garguilo)*** In 2021, Ellyn served on the trial team that successfully litigated the nation's first opioid case to be heard before a state jury and secured a liability verdict against the remaining defendants, Teva Pharmaceuticals USA, and its subsidiaries. Ellyn and the firm's opioid team represented Suffolk County and presented the case alongside Nassau County and the State of New

York. The trial began in June 2021 and lasted 7 months. It is believed to be the longest jury trial in New York history and included more than 800 exhibits, of which Ellyn oversaw in her role as a key member of the trial team. After the liability verdict, the team secured a settlement with remaining defendants for \$200 million.

Additional settlements with other Defendants, including manufacturers and distributors, occurred throughout the trial and up to the eve of closing, totaling over \$1.5 billion, which provided recoveries for Suffolk and Nassau counties, the State of New York and numerous other New York counties the firm represents.

- ***The Cleveland Opioid Trial (Hon. Dan Aaron Polster)*** In 2019, Ellyn was part of the trial team in the first federal bellwether trial against the opioid manufacturers. The team hammered out the final settlement details on the eve of trial that secured a total recovery of \$325 million for two Ohio counties.

2012 to Present Helping Victims of Sexual Abuse

In 2012, Ellyn was involved in the first round of litigation against Fairfield University; the Society of Jesus of New England (Jesuits); the Order of Malta, American Association, USA; Haiti Fund, Inc.; Father Paul E. Carrier, S.J.; and Hope E. Carter, in which the team secured a settlement of \$12 million on behalf of 24 impoverished abuse victims in Haiti. After additional victims came forward, Ellyn helped achieve a landmark \$60 million class action settlement in 2019 on behalf of over 150 Haitian nationals. She was involved from the initial meetings with the clients through the mediation that resolved the case. She travelled extensively to Haiti, responding to discovery requests, preparing pleadings, prepping witnesses for depositions (who did not speak English), and conducting and defending depositions in Port au Prince, Cap Haitian, Dominican Republic, and throughout the United States. In addition, Ellyn arranged travel and documentation for clients who lacked identification.

Representative Cases

In re: National Prescription Opiate Litigation, MDL 2804 (N.D. Ohio 2018)

In re: Hair Relaxer Marketing, Sales Practices, And Products Liability Litigation, MDL 3060 (N.D. Ill. 2022)

In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, MDL No. 3047 (N.D. CA 2022)

In re: Opioid Litigation, Suffolk Supreme Court, No. 400000/2017

St. Louis v. Perlitz et al., case number 3:13-cv-01132, in the U.S. District Court for the District of Connecticut (series of consolidated actions)

Jean-Charles v. Perlitz, 3:11-CV-00614-RNC (D. Conn. 2013) (series of consolidated actions)

In re: Pelvic Repair System Products Liability Litigation, MDL 2325, 2326 & 2327 (S.D. W. Va.)

In re: Actos Products Liability Litigation, MDL 2299 (W.D. La.)

EXHIBIT B - [Proposed] Plaintiffs' Leadership Group ("PLG")

Co-Leads:

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Coordination with JCCP Counsel

The PLG has had ongoing discussions with members of the JCCP Leadership to coordinate proposed MDL leadership but has not reached an agreement. To facilitate coordination with the MDL and the JCCP, the PLG proposes that the following counsel be added to the Proposed Leadership Group.

Brian Abramson as a member of the Plaintiffs' Steering Committee
Williams Hart Boundas

Celine Cutter (JCCP) as Plaintiffs' Liaison Counsel
Cutter Law Group